Mr. Chairman, members of the Subcommittee:

About a month ago, the Committee graciously heard me and the Director, and Regional Directors of the National Park Service, on general problems of the national park administration. One of the subjects pursued briefly was concessions policy. The Department appreciates your scheduling this hearing, for this is an extremely important matter.

The furnishing of goods and services to the public within federal reservations represents an almost infinitesimal fraction of the gross national product. PX's and commissaries are one example; we find it difficult to overestimate the problem just confining it to the national parks.

For one thing, visitors instinctively equate concession operations with the directly governmental operations. Applicants for jobs with concessioners write the park superintendent; complaints regarding service almost always come to the Department, many times in circumstances which indicate the complainant honestly believes he has been unfairly dealt with by a government servant; rangers are confused with bellmen, and vice versa; and people sometimes feel they have to be a hotel guest in order to hear the naturalists' lectures.

This brings matters right back to you as members of Congress--since you are held responsible, in an almost literal sense, for the
concessioners, the policies which govern relationships with them are your concern.

The starting point for a discussion of concessions policy has to be its broad governmental aspect—what are the governmental alternatives. The option of pushing all commercial-type operations—housing, feeding, retailing, furnishing of guiding or outfitters services, and transportation—outside the park, is probably not open to us. The reasons are self-evident; the American people simply won't tolerate withdrawal of services from usual and accustomed places.

If the services are to be performed at all, the choice is a simple one—government operation, or private operation.

To me, this is an easy decision. I think there is pretty general agreement that the private sector of our economy has the capability to give the service and furnish the goods which our policies or precedent dictate should be available to park visitors. If private enterprise has the capability, and can conform to the public policy and public interest requirements, then private enterprise ought to be given the job. One of the good reasons is that it will probably do a much better job of it, everything else being equal.

As I read the history of this matter within the Department, the policy under which we are now operating—the policy of this Committee which has been translated into the substitute language we have
suggested for the bills before you—represented a conscious exercise of this option. At the end of the 1940's, probably, a substantial school of thought favored buying out the existing concessioners, and going to a government program, at least to the extent of using federal capital for facilities constructions. It was, wisely, decided to go the other route.

But the problems of that era, in retrospect, were simple in comparison to those we now face. Parks had "gone to war" in the 40's, and the recreation "business" had not assumed the proportions it now has. The 1950 policy has served us well, and can continue to serve us. But because the amounts of money invested, collected, and needed ($69 million invested by concessioners; annual gross income of $55 million; who knows how many millions of dollars to take care of the growing demand of a visitor load approaching a hundred million a year?)--because the amounts are large, scrutiny of the policy or operations have come to us from several sources.

The Appropriations Committees are legitimately concerned; so are the House Government Operations Committee, the Comptroller General, and the Bureau of the Budget. We have accordingly, suggested that the pending bills be amended to conform with the policies heretofore enunciated in this Committee. We think it appropriate that the policies be statutory.

With this as a beginning point—that legislative consideration and action is desirable—let me make a few observations about the general nature of relationships with concessioners.

First, concessioners are a vital arm of park administration. If a superintendent and his concessioners do not work well together,
the park suffers. They need each other; mutual trust and a common dedication to serving the public must mark their relationships, and these are things not capable of being precisely assured by law, regulation, or policy.

Second, if we are going to look to the resources of the private sector of the economy for a public task, we must understand the "rules of the game" so to speak. If a concessioner is expected to raise private capital to meet public requirements, the administering public official should understand that equity capital is not always available; and he should realize that even if it is available, it might be less sensible to use equity capital than debt capital. Our tax laws, for example, favor the latter. If the money is to be raised by borrowing, it is reasonable to expect that any departure from the norm -- a first mortgage on the real property would be a norm in most non-park situations -- affects the cost of the money, or its availability at all in tight situations. The tenure under the contract must be good enough and long enough to amortize the loan. We send our concessioners to the private money market, and we ought to accommodate, consistent with the public interest, to the legitimate consequences of reliance on the private money market. Such accommodation is in our own interest, not solely a concession to a concessioner.

By and large, I think the concessioners are responsible and responsive to the corollary propositions. One of these is, of course, that in innumerable and often exasperating ways, they won't be permitted to operate in the manner which their own business sense tells them is the best. They have responsibilities as an auxiliary arm of the government, operating within a federal reservation.
Another corollary is that the federal government has no way of guaranteeing any given rate of return. Concessioners, too, can suffer economic reverses, sometimes in the face of rising business indicators.

For example, suppose the concessioner and the government make the wrong guess as to what the people want in a given line of accommodations or services -- the risk of loss is not on the government. If it is decided to have a new boat to haul passengers to Fort Sumter, and it turns out the people don't want to ride the boat, there is nothing the Park Service can do to help the concessioner if he goes bankrupt.

These are elementary matters, about which most people agree. There are three areas of conflict which I would like to discuss briefly.

In the specialized language of concessions management, the first area is the so-called preferential right to provide additional services. This is an outgrowth of necessity, one of the inducements offered to concessioners at an earlier period of park history. As of now, it is pretty well locked in in the scheme of concession operations, justified on the pragmatic test that it has worked well, and that it carries a concomitant obligation to provide the new services. The "obligation" is not, however, enforceable, there being no penalty, other than the supposed economic one of losing the additional business, or of having thereafter a competitor within the park.
Whether the preferential right should be included in concession contracts in new areas is legitimately open to inquiry. The Park Service strongly supports a preferential right as a management tool, and our report supports the proposition.

A second kind of preference is similar, in some respects, and involves the preferential opportunity of concessioners who have performed satisfactorily during the term of their contract to negotiate renewals thereof. The nub of the argument for this provision goes back to my earlier statement, that successful operation of a park requires the closest working relationship between superintendent and concessioner -- superintendents don't want to break in new concessioners.

That is the stated argument; the real argument revolves around the question of measure of compensation for the concessioner's investment if his contract is not renewed. When a concessioner makes improvements on federal property, the application of the law of fixtures, and the doctrine of sovereign immunity, put the concessioner in a difficult position. Presumably, the government recognizes a "vested interest" in the facilities in the concessioner, which in the special glossary of concessions management is denominated as a "possessory interest". Under present practice, if it is determined that a concession operation is no longer needed and should be discontinued, the concessioner's entitlement would be to the "book value" of his remaining investment.
As an economic fact, this occasionally is akin to confiscation. The hardship is avoided in two ways — the retiring concessioner isn't so limited in making a sale to an incoming concessioner where the test the Park Service applies is the appraised "sound value". And, in the face of an evident and inequitable hardship, doubts about continuance of a concession are probably resolved in favor of renewal.

Decisions to terminate a concession, and remove the concessioned service from an area entirely are difficult to make in these circumstances, yet good park management dictates such a course more and more frequently, as visitor tastes vary, or as the policy of accommodating heavier day-use loads requires it.

The courts are considering the due process aspect of the "book value" rule in two cases now pending. Signal Mountain Lodge in Wyoming (Grand Teton National Park) characterizes the compensation situation of a concessioner who is faced with termination of his contract.

The bill we have submitted, reflecting the existing policy, is not as broadly supportive of the concessioners' views as they would like. It is probably more generous than that which has been urged upon us by the other groups, executive and legislative, which have expressed views on concessions policy.

In a statement before the Appropriations Committee of the House of Representatives, I said that franchise fees are not a good tool
for regulation of concessioners. As a method of raising government revenue, they don't do much of a job either. Nevertheless, it is evident that money ought to be raised based on doing business in parks, as well as based on entering parks. We are determined, within existing policies, to do a better job with franchise fees; we will welcome any guidance the Congress may want to give us on relating franchise fees to management objectives, or on the utilization of this as an avowed source of revenue.

These are some of the highlights of the problem. We sincerely want to help the concessioners to carry on their business as nearly as may be under normal circumstances, for then they will do us the best job. We are sensitive to the public interest considerations which measure our responsibilities to regulate and control concessioners. We are aware of the anomalies presented by the system of compensation on termination, transfer and renewal of concession privileges. And we think the Congress ought to consider these problems, and enact legislation.

By and large, we are satisfied with existing policies, and that is the purport of our report. But the pending bills are carefully drafted, and we'd like to work with the Committee in accommodating legitimate needs for more certainty in some of the problem areas.